

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GREGORY C. MILTON )  
                                 Plaintiff, )  
                                 ) Civil Action No. 04-10482-  
MEL )  
                                 v. )  
                                 ) )  
OFFICER WINDELL JONSIEY, et al.),  
                                 Defendants. )

MEMORANDUM AND ORDER

For the reasons stated below, the Clerk will be directed to (1) assign a new civil action to Mr. Milton's habeas petition and (2) file Mr. Milton's habeas petition and the Application to Proceed Without Prepayment of Fees under the new civil action number.

Because Mr. Milton submitted both the \$150.00 filing fee and an Application to Proceed Without Prepayment of Fees, he will be granted additional time to inform the Court whether he wishes to pay the \$150.00 filing fee for this civil rights action. If Mr. Milton wishes to proceed in forma pauperis, he will be granted additional time to file a new fee waiver application and is advised that his complaint would be subject to preliminary screening.

## DISCUSSION

On March 9, 2004, Mr. Gregory C. Milton, a patient at the Lemuel Shattuck Hospital Metro-Boston Inpatient Services Unit, filed (1) an Application to Proceed Without Prepayment of

Fees; (2) a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus; and (3) a civil rights complaint pursuant to 42 U.S.C. §§ 1983, 1988. Mr. Milton's pleadings were accompanied by a check in the amount of \$150.00.

I. Mr. Milton's Habeas Petition

Because the Clerk inadvertently filed Mr. Milton's habeas petition in this civil rights action, the Clerk will be directed to (1) assign a new civil action to the habeas petition and (2) file both the habeas petition and the Application to Proceed Without Prepayment of Fees under the new civil action number.

II. Mr. Milton's Civil Rights Complaint

A party filing a civil action in this Court must either (1) pay the applicable filing fee or (2) file an Application to Proceed Without Prepayment of Filing Fees and Affidavit (the "Application"). See 28 U.S.C. 1914(a) ("filing fee of \$150, except that on application for a writ of habeas corpus the filing fee shall be \$5."); 28 U.S.C. 1915 (proceedings in forma pauperis).

Because plaintiff submitted both the \$150.00 filing fee and an Application to Proceed Without Prepayment of Fees, he will be granted additional time to inform the Court whether he wishes to pay the \$150.00 filing fee for this civil rights

action.

If plaintiff chooses to proceed in forma pauperis, he will be granted additional time to file a new fee waiver application. Additionally, plaintiff is advised that if he proceeds in forma pauperis his complaint will be subject to the screening provisions of 28 U.S.C. § 1915. See 28 U.S.C. § 1915 (proceedings in forma pauperis).<sup>1</sup>

ORDER

Based upon the foregoing, it is hereby

ORDERED, the Clerk shall (1) assign a new civil action to Mr. Milton's habeas petition and (2) file Mr. Milton's habeas petition and the Application to Proceed Without Prepayment of Fees under the new civil action number; and it is further

ORDERED, plaintiff shall, within 35 days from the date of this Memorandum and Order, inform the Court whether he wishes to pay the \$150.00 filing fee for this civil rights action. If Mr. Milton wishes to proceed in forma pauperis, he shall file a new fee waiver application. The Clerk shall send Mr.

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<sup>1</sup>Section 1915 of Title 28 authorizes federal courts to dismiss actions in which a plaintiff seeks to proceed without prepayment of fees if the action lacks an arguable basis either in law or in fact, Neitzke v. Williams, 490 U.S. 319, 325 (1989), or if the action fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2).

Milton an Application to Proceed Without Prepayment of Fees  
with a copy of this Memorandum and Order.

SO ORDERED.

Dated at Boston, Massachusetts, this 17th day of March, 2004

/s/ Morris E. Lasker

MORRIS E. LASKER  
UNITED STATES SENIOR DISTRICT

JUDGE